

JOHN E. KEOGH

IBLA 82-629

Decided May 17, 1982

Appeal from decision of Utah State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. U MC 131444 through U MC 131452.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Where a mining claimant submits a copy of his annual proof of labor to the BLM District Office in Moab, Utah, on Dec. 30, 1981, he has not complied with 43 CFR 3833.2-1, even though the instrument was submitted to the District Office within the statutory period for such filing, because the proof of labor has not been filed in the "proper BLM office," which is the BLM Utah State Office in Salt Lake City, as expressly provided by 43 CFR 1821.2-1(d), and 43 CFR 3833.0-5(g). Where the required instrument is not received by and date stamped by the proper BLM office during the statutory time period, it is untimely and the mining claim is properly declared abandoned and void under 43 CFR 3833.4(a).

APPEARANCES: John E. Keogh, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

John E. Keogh appeals the Utah State Office (USO), Bureau of Land Management (BLM), decision of March 16, 1982, which declared the unpatented Big Dream #1 and #2, Bad Dream #1 and #2, Nightmare #1 and #2, Consolation #2 and #3, and Rube lode mining claims, U MC 131444 through U MC 131452, abandoned and void because no proof of labor or notice of intention to hold the claims was filed with USO on or before December 30, 1981, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1.

Appellant states that he had been prevented from delivering the proof of labor to USO on December 30, so he took the instruments to the BLM district office in Moab, Utah, on December 30, 1981, where they were stamped and then transmitted to USO. The instruments were received and date stamped by USO January 4, 1982.

The record indicates that the Big Dream #1 and #2, Bad Dream #1 and #2, and Nightmare #1 and #2 claims were located in September 1975. The Consolation #2 and #3 and Rube claims were located in September 1979. Copies of the notices of location were timely filed with USO in October 1979. Proofs of labor were filed timely October 22, 1979, and December 30, 1980.

Section 314 of FLPMA requires that a copy of the notice of location for mining claims located prior to October 21, 1976, be filed with the proper office of BLM within 3 years after October 21, 1976, and for claims located after that date, a copy of the location notice must be filed with the proper office of BLM within 90 days after location. For claims located before October 21, 1976, evidence of assessment work or a notice of intention to hold the claim had to be filed in the proper office of BLM within 3 years after October 21, 1976; for claims located after October 21, 1976, proof of assessment work or a notice of intention to hold had to be filed on or before December 30 of each calendar year after the year in which the claim was located. Each instrument filed with BLM also had to be filed for record in the local recording office having jurisdiction.

The "proper BLM office" is defined in 43 CFR 3833.0-5(g) as the BLM office which has jurisdiction over the area in which the claim is located, as specified in 43 CFR 1821.2-1(d). This latter section states that the Utah State Office in Salt Lake City is the office having jurisdiction over public lands in the State of Utah. Thus, under 43 CFR 3833.1-2(a), appellant was required to have the instruments relating to the assessment work delivered to, received by, and date stamped by the Utah State Office on or before December 30, 1981.

Appellant submitted his proofs of assessment work to the BLM district office in Moab, Utah, rather than to USO in Salt Lake City as required by the regulations. Accordingly, the instruments may not be regarded as having been "filed" with BLM until actually received and date stamped by USO. The instruments were received and date stamped January 4, 1982, after the time period specified in the statute had expired. It is irrelevant that the instruments were tendered to the Moab district office, as that office is without authority to accept filings for recordation of mining claims under FLPMA. The need to conduct business at the BLM office having appropriate jurisdiction has long been recognized. Mathews v. Zane, 7 Wheat. 164, 5 U.S. 244 (1822). See also Donald Jardine, 58 IBLA 49 (1981); C. F. Linn, 45 IBLA 156 (1980); Gretchen Capital, Ltd., 37 IBLA 392 (1978).

The responsibility is on the mining claimant to file the required information timely in the proper office of BLM. The Board has no authority to excuse noncompliance with the statute or to afford any relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

James L. Burski
Administrative Judge

